

**40 KAR 2:080. Prehearing procedure for revocation, suspension of registration or refusal to renew certification of professional solicitors or fundraising consultants.**

RELATES TO: KRS 367.656

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.656

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.650 requires in pertinent part the Office of the Attorney General, Division of Consumer Protection to promulgate administrative regulations pertaining to the operation of charitable solicitors and fundraiser with the Commonwealth. This administrative regulation sets forth initial procedures for a due process hearing for the revocation, suspension, of registration or refusal to renew a registration of professional solicitors or fundraising consultants.

Section 1. Notice of Hearing. KRS 367.656 shall control the procedure for notifying a solicitor or consultant prior to revoking, or suspending a registration or refusing to renew a solicitor's or consultant's registration.

Section 2. Complaints and Answers. (1) Upon a request for a hearing from a professional solicitor or fundraising consultant, or upon his own initiative, a complaint shall be prepared by the Attorney General.

(2) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(3) A complaint shall be notarized.

(4) Exhibits or other documents, shall be attached to the complaint.

(5) A copy of the complaint and attachments shall be served on the professional solicitor or fundraising consultant or their designee by the Attorney General:

(a) At the last known address of the solicitor or consultant;

(b) By certified mail, return receipt requested.

(6)(a) The solicitor or consultant shall file with the hearing officer an answer to the complaint.

(b) The answer shall be notarized.

(c) The answer shall be filed with the hearing officer within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on the Attorney General by the solicitor or consultant by certified mail, return receipt requested to the address shown on the complaint.

Section 3. Counsel. If a party has retained counsel:

(1) The attorney shall file an entry of appearance with the hearing officer;

(2) Notices, correspondence, and orders relating to the hearing shall be transmitted to the attorney; and

(3) Motions, requests, or filings on behalf of a party or appraiser shall be made by the attorney.

Section 4. Motions, requests, filings, and other material filed with the hearing officer shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 5. Witnesses. A party shall file a list of his witnesses:

(1) With the hearing officer;

(2) At least ten (10) days prior to the hearing.

Section 6. Subpoenas. (1) A party shall file a written request to the presiding officer at least four-

teen (14) days prior to a hearing if the party wishes to:

- (a) Subpoena a witness; or
- (b) Require the production of a document.
- (2) The request shall contain the:
  - (a) Name and address of residence and place of employment, including county, of the witness;
  - (b) Name of document or item, with a description sufficient to identify the document or item.

Section 7. Continuance. (1) A hearing may be continued by the hearing officer:

- (a) To permit any prehearing procedures; or
- (b) For other good cause.
- (2) If it is necessary to continue a hearing, the hearing officer shall:
  - (a) Reschedule the hearing; and
  - (b) Notify the parties.
- (3)(a) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the hearing officer at least seven (7) working days before the hearing.
- (4) A motion for continuance may be filed upon the occurrence of an emergency.
- (5) The hearing officer shall notify a party of his decision in writing.

Section 8. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:

- (a) On his own motion; or
- (b) Upon motion of a party.
- (2) The hearing officer shall schedule a prehearing conference if the hearing officer determines that it will:
  - (a) 1. Establish stipulations;
  - 2. Clarify issues;
  - 3. Identify witnesses;
  - 4. Resolve issues relating to:
    - a. Evidence;
    - b. Subpoenas;
    - c. Discovery; or
    - d. Protective orders; and
  - (b) Otherwise promote the orderly and prompt conduct of the hearing; or
  - (c) Promote settlement of the issues.
- (3) If the prehearing officer schedules a prehearing conference, the prehearing officer shall notify the parties in writing:
  - (a) Of the date, time and place of the prehearing conference; and
  - (b) That they are required to attend the prehearing conference.
- (4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.
- (b) A copy of the prehearing order shall be mailed to the parties.

Section 9. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.

- (2) The request shall:
  - (a) Specify the type of discovery requested;
  - (b) Where applicable, describe in sufficient detail:
    - 1. Names and addresses of persons or items;
    - 2. Documents, other items, or places; and
  - (c) State the reason discovery is requested.

- (3) The hearing officer may deny, limit, or require discovery.
- (4) Discovery may be obtained by:
  - (a) Written or oral depositions;
  - (b) Interrogatories;
  - (c) Production or inspection of documents or things;
  - (d) Permission to photograph, or enter upon land or other property; or
  - (e) Physical or mental examinations.

Section 10. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.

- (2) A settlement agreement:
  - (a) Shall be subject to approval by the hearing officer; and
  - (b) If approved by the hearing officer, shall constitute:
    - 1. A waiver of a party's right to an administrative hearing; and
    - 2. The final order of the hearing officer.

Section 11. Motions. A motion shall be:

- (1) In writing;
- (2) Signed; and
- (3) Filed with hearing officer. (21 Ky.R. 689; Am. 1284; eff. 10-12-94.)